LEGAL UPDATE

2022 MSA SUMMER CONFERENCE
ERIK G. HOLLAND
UNDERSHERIFF/GENERAL COUNSEL
PLATTE COUNTY SHERIFF'S OFFICE

1

DISCLAIMER

This presentation is presented for informational and educational purposes only and is not intended nor should it be construed as legal advice. No attorney-client relationship is created between the presenter and any observer or recipient of this material either through the presentation of information or the answering of specific questions or through any other means. Individuals seeking legal advice regarding the topics discussed should consult their or their entity's legal counsel.

2

US SUPREME COURT

3

CITY OF TAHLEQUAH V. BOND

- Rollice's estate filed suit under 42 USC § 1983, for violation of Rollice's 4th Amendment right to be free from excessive force.
- The defendants moved for summary judgment, which was granted by the District Court, which concluded that the officers' use of force was reasonable. The District Court also held that even if the use of force wasn't reasonable, the officers would have been protected by qualified immunity.

4

CITY OF TAHLEQUAH V. BOND

- The 10th Circuit reversed. In reversing the District Court, the 10th Circuit explained that circuit precedent allowed for an officer to be held liable for a shooting that was objectively reasonable if "the officer's reckless or deliberate conduct created a situation requiring deadly force."
- The 10th Circuit concluded that a jury could have found that Officer Girdner's initial step toward Rollice and the officers' "subsequent cornering" of Rollice in the back of the garage recklessly created the situation that led to the shooting. The 10th Circuit concluded that this type of finding would have made the shooting unconstitutional.
- The 10th Circuit also noted that several cases clearly established that the officers' conduct was unlawful.

5

CITY OF TAHLEQUAH V. BOND

- SCOTUS began its analysis by noting: "We need not, and do not, decide whether the officers violated the Fourth Amendment in the first place, or whether recklessly creating a situation that requires deadly force can itself violate the Fourth Amendment. On this record, the officers plainly did not violate any clearly established law."
- SCOTUS pointed out that qualified immunity "shields officers from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

6

CITY OF TAHLEQUAH V. BOND

- "As we have explained, qualified immunity protects all but the plainly incompetent or those who knowingly violate the law."
- SCOTUS then reiterated its warning to lower courts not to define clearly established law at a high level of generality.
  - "It is not enough that a rule be suggested by then-existing precedent; the rule's contours must be so well defined that it is clear to a reasonable officer that his conduct was unlawful in the situation he confronted. Such specificity is especially important in the Fourth Amendment context, where it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts."

7

CITY OF TAHLEQUAH V. BOND

- SCOTUS held that the 10th Circuit contravened those settled principles.
  - "Not one of the decisions relied upon by the Court of Appeals comes close to establishing that the officers' conduct was unlawful."
- The Supreme Court noted that the main case the 10th Circuit relied on was "dramatically different" from the facts in *Tahlequah*.
  - In *Allen*, officers responded to a potential suicide call by sprinting toward a parked car, screaming at the suspect, and attempting to physically wrestle a gun from his hands. The officers in *Tahlequah*, "engaged in a conversation with Rollice, followed him into a garage at a distance of 6 to 10 feet, and did not yell until after he picked up a hammer."
- In reversing the 10th Circuit, SCOTUS noted that neither the 10th Circuit nor the Plaintiff were able to identify a single precedent finding a 4th Amendment violation under similar circumstances.

8

VEGA V. TEKOH

- The question before SCOTUS in *Vega*, is whether there can be liability under 42 USC § 1983 based on an allegedly improper admission of an un-*Mirandized* statement in a criminal prosecution.
- Tekoh was working as a certified nursing assistant at a Los Angeles area medical center. In March of 2014, a female patient accused him of sexually assaulting her. The medical center reported the accusation to the Los Angeles County Sheriff's Department.

9

VEGA V. TEKOH

- Tekoh was interrogated by Deputy Vega at his place of employment and was not advised of his *Miranda* rights prior to questioning.
- Tekoh eventually provided a written statement apologizing for inappropriately touching the patient's genitals. Tekoh was arrested and charged with Unlawful Sexual Penetration.
- Tekoh was prosecuted and his confession was admitted into evidence. At trial the judge ruled that *Miranda* had not been violated because Tekoh was not in custody when he provided the statement. The jury acquitted Tekoh and he filed the civil action alleging violations of his constitutional rights, including his 5th Amendment right against compelled self-incrimination.

10

VEGA V. TEKOH

- At the civil trial the judge instructed the jury, "to decide whether Tekoh's 5th Amendment right had been violated." The court also instructed the jury to determine "based on the totality of all the surrounding circumstances whether Tekoh's statement had been improperly coerced or compelled.
  - The court explained that, "a confession is improperly coerced or compelled…if a police officer uses physical or psychological force or threats not permitted by law to undermine a person's ability to exercise his or her free will."
- The jury ruled in favor of the officer and Tekoh appealed to the 9th Circuit.

11

VEGA V. TEKOH

- The 9th Circuit reversed holding that "the use of an un-*Mirandized* statement against a defendant in a criminal proceeding violates the 5th Amendment and may support a § 1983 claim against the officer who obtained the statement."
- The 9th Circuit acknowledged that SCOTUS had repeatedly said that *Miranda* adopted prophylactic rules designed to protect against constitutional violations and that SCOTUS established in *Dickerson* that the right of a criminal defendant to not have an un-*Mirandized* statement introduced in the prosecution's case-in-chief was a right secured by the Constitution.

12

VEGA V. TEKOH

- SCOTUS began its analysis by noting that, "Section 1983 provides a cause of action against any person acting under color of state law who subjects a person or causes a person to be subjected…to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws."
- SCOTUS noted that the 5th Amendment was made applicable to the states through operation of the 14th Amendment. SCOTUS also noted that the self-incrimination clause of the 5th Amendment permitted "a person to refuse to testify against himself at a criminal trial in which he is a defendant and also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal where the answers might incriminate him in future criminal proceedings."
  - The right also bars the introduction of an out of court statement obtained by compulsion.

13

VEGA V. TEKOH

- SCOTUS noted that the notion that a violation of *Miranda* constitutes a violation of the 5th Amendment "is wrong."
  - "*Miranda* did not hold that a violation of the rules it established necessarily constitute a 5th Amendment violation, and it is difficult to see how it could have held otherwise."
  - "At no point in the opinion did the Court state that a violation of its new rules constituted a violation of the 5th Amendment right against compelled self-incrimination. Instead, it claimed only that those rules were needed to safeguard that right during custodial interrogation."

14

VEGA V. TEKOH

- SCOTUS also pointed out that it had previously distinguished a violation of the *Miranda* rules from a constitutional violation in *Elstad*.
  - "In that case, a suspect in custody was initially questioned without receiving a *Miranda* warning, and the statements made at the time were suppressed. But the suspect was later given *Miranda* warnings, chose to waive his *Miranda* rights, and signed a written confession…. The Court refused to exclude the signed confession and emphasized that an officer's error in administering the prophylactic *Miranda* procedures … should not breed the same irremediable consequences as police infringement of the 5th Amendment itself."

15

VEGA V. TEKOH

- "In sum, a violation of *Miranda* does not necessarily constitute a violation of the Constitution, and therefore such a violation does not constitute the deprivation of a right secured by the Constitution."
- "*Miranda* rests on a pragmatic judgment about what is needed to stop the violation at trial of the 5th Amendment right against compelled self-incrimination. That prophylactic purpose is served by the suppression at trial of statements obtained in violation of *Miranda* and by the application of that decision in other recognized contexts. Allowing the victim of a *Miranda* violation to sue a police officer for damages under § 1983 would have little additional deterrent value, and permitting such claims would cause many problems."

16

VEGA V. TEKOH

- SCOTUS presented a list of possible problems that an expansion of the *Miranda* doctrine might cause.
- SCOTUS reversed the 9th Circuit and remanded the case holding that a violation of *Miranda* was not itself a violation of the 5th Amendment and that SCOTUS saw no justification for expanding *Miranda* to confer a right to sue under § 1983.

17

DOBBS V. JACKSON WOMEN'S HEALTH ORGANIZATION

- *Dobbs* is the decision which overruled *Roe v. Wade* and *Planned Parenthood v. Casey*.
- Due to the *Dobbs* decision, on June 24, 2022, the Missouri Attorney General issued an opinion which activated RSMo. 188.017 – the Right to Life of the Unborn Child Act.

18

DOBBS/RSMO. 188.017

- "Notwithstanding any other provision of law to the contrary, no abortion shall be performed or induced upon a woman, except in cases of medical emergency. Any person who knowingly performs or induces an abortion of an unborn child in violation of this subsection shall be guilty of a class B felony, as well as subject to suspension or revocation of his or her professional license by his or her professional licensing board. A woman upon whom an abortion is performed or induced in violation of this subsection shall not be prosecuted for a conspiracy to violate the provisions of this subsection."
- It is an affirmative defense that the person performed or induced an abortion because of a medical emergency. The burden of persuasion on the affirmative defense rests with the defendant.

19

8TH CIRCUIT COURT OF APPEALS

20

UNITED STATES V. GREEN

- In August of 2017, Detective Antonio Garcia was working interdiction at a Federal Express (FedEx) sorting center. FedEx had an agreement with police to perform interdiction duties only between the time the packages arrived (around 6am) and when they left for delivery (around 8am).
- The agreement also stated that officers could only seize packages when a K9 alerted on the package. K9s were not allowed near the conveyor belt where the packages moved through the facility. Officers had to bring flagged packages to the K9 and if the K9 didn't alert the package had to be immediately returned to the conveyor belt.

21

UNITED STATES V. GREEN

- Detective Garcia noticed a large moving box with a return label from Brownsville, Texas, which was known as a source city for illegal narcotics. The boxes seams were glued.
- Detective Garcia testified that in his seventeen years of interdiction work glued seams indicated illegal narcotics "100% of the time." Garcia also testified that he "looks at moving boxes right away because they are sturdy and thick, making them well suited to contain large amounts of drugs."

22

UNITED STATES V. GREEN

- Garcia carried the box 200 feet to the back of the FedEx facility where his K9 immediately alerted on the box. Garcia's K9 was a certified narcotics dog and was considered very reliable according to Garcia. Garcia filled out the paperwork to seize the box. The entire process from removal from the conveyor belt to the K9 alert took approximately three minutes.
- A state search warrant was obtained for the box and a state anticipatory search warrant was obtained for the address where the box was to be delivered.

23

UNITED STATES V. GREEN

- A controlled delivery was conducted but no one was at the apartment and the box was left at the door. Approximately eight minutes later, Green arrived at the apartment while talking on the phone. Officers overheard Green say, "the box had arrived." Green then unlocked the door, placed the box inside and left the apartment building.
- Green was arrested in the parking lot a few feet from his vehicle. A tactical team then entered the apartment to ensure that they could safely execute the search warrant.

24

UNITED STATES V. GREEN

- The tactical team immediately saw the box just inside the doorway, but proceeded to go through every room to look in any place that a person could hide. The tactical team also looked in the kitchen trashcan, kitchen cabinets and in a shoebox located on top of Green's bedroom dresser.
- The sweep took approximately 10 minutes and the tactical team saw weapons and marijuana inside of the apartment. Despite seeing these items in plain view, the tactical team did not seize anything.

25

UNITED STATES V. GREEN

- Garcia then entered the residence, performed a walk-through, and opened the box. A foam cooler containing 24.4 pounds of marijuana was located inside of the box.
- Officers then obtained a federal search warrant for the apartment. An AR-15 rifle was recovered from the bedroom closet, a pistol, a fully loaded magazine, three other magazines, ammunition, a bullet-proof vest, a roll of heat-sealed bags, a digital scale, a handwritten ledger, five baggies of powder substances and a shoe box with marijuana residue were also recovered.

26

UNITED STATES V. GREEN

- Green was charged in federal court on three separate counts. Green moved to suppress the evidence seized from the apartment on the grounds that the officers exceeded the scope of the state search warrant.
- The magistrate judge recommended denying the motion and the District Court agreed but granted Green leave to challenge whether reasonable suspicion supported the seizure of the box at the FedEx facility and whether probable cause supported Green's arrest.
  - Green also moved to suppress the box's initial seizure and his arrest. Both motions were denied.

27

UNITED STATES V. GREEN

- Green conditionally pled guilty on one count, reserving his right to appeal the suppression motion denials. Green was sentenced to 60 months, and he appealed challenging the constitutionality of the box's initial seizure, his arrest and the protective sweep.
- The 8th Circuit began its analysis by noting that two different standards applied to denials of motions to suppress evidence. The Court of Appeals reviewed the District Court's findings of fact for clear error and reviewed its denial of the motions de novo.

28

UNITED STATES V. GREEN

- In examining the initial seizure of the box, the 8th Circuit noted that, "a seizure occurs when law enforcement meaningfully interferes with an individual's possessory interests in property. By implication, the meaningful interference requirement means that not every governmental interference with a person's property constitutes a seizure of that property under the Constitution."
- The 8th Circuit had previously dealt with the seizure of packages in *US v. Va Lerie* and had identified three factors which should be examined when considering if a package had been seized. If even one factor is satisfied, then a 4th Amendment seizure had occurred.

29

UNITED STATES V. GREEN

- The three *Va Lerie*, factors are:
  - Whether it delayed a passenger's travel or significantly impacted the passenger's freedom of movement;
  - Whether it delayed the package's timely delivery; and
  - Whether it deprived the carrier of custody of the item.
- The 8th Circuit noted that a law enforcement officer must have reasonable suspicion that a piece of mail, or a package shipped via a commercial carrier, contains contraband to lawfully seize it for investigative purposes.

30

UNITED STATES V. GREEN

- The 8th Circuit pointed out that it had previously held that a K9 alert on package provided reasonable suspicion to seize the package.
  - The key question was when the seizure took place.
- The Court noted that Green did not argue that either of the first two *Va Lerie* were satisfied so the only factor to be analyzed was the third factor. In other words, did Garcia deprive FedEx of custody of the box by removing it from the conveyor belt and walking 200 feet to the K9?

31

UNITED STATES V. GREEN

- The 8th Circuit focused on the sender's reasonable expectations of how the carrier would handle the package and stated that those expectations defined the scope of the carrier's custody.
- The 8th Circuit also held that circuit precedent established that the third *Va Lerie* "factor (whether the carrier was deprived of custody) turns more on whose direction law enforcement followed, rather than where the package was briefly taken."

32

UNITED STATES V. GREEN

- The 8th Circuit held that Garcia had acted at the direction of FedEx by taking the package to the location FedEx had designated for K9 sniffs. The 8th Circuit determined that since Garcia briefly moved the box at FedEx's direction, the third *Va Lerie* factor had not been met and the seizure did not occur until after the K9 alerted (at which point there was clearly reasonable suspicion).

33

UNITED STATES V. GREEN

- The 8th Circuit then turned to Green's arrest. The 8th Circuit noted that, "[a]n officer has probable cause to make a warrantless arrest when the facts and circumstances are sufficient to lead a reasonable person to believe that the defendant has committed or is committing an offense."
  - The Court noted that officers do not have to witness a crime or have all the evidence needed for conviction; instead, "officers only need a probability or substantial chance of criminal activity, rather than an actual showing of criminal activity."

34

UNITED STATES V. GREEN

- The 8th Circuit held that the suspicious appearance of the box, the K9's alert, together with Green picking up the box, placing it inside the apartment and his demonstrated familiarity with that specific box supported probable cause to arrest him.
- The Court next examined the protective sweep conducted by the tactical team. Green's argument was that the sweep of the entire apartment was unconstitutional because the anticipatory warrant only authorized the officers to seize one item (the box) which was right inside the door and that the 10-15 minutes looking in trash cans, cabinets, etc. violated the 4th Amendment.

35

UNITED STATES V. GREEN

- The 8th Circuit noted that a protective sweep is an exception to the general warrant requirement of the 4th Amendment.
- "A protective sweep is narrowly confined to a cursory visual inspection of those places in which a person might be hiding. During a properly limited protective sweep, the police may seize an item that is in plain view if its incriminating character is immediately apparent."

36

UNITED STATES V. GREEN

- The 8th Circuit noted that SCOTUS had addressed when and how officer may conduct a protective sweep in *Maryland v. Buie* but that case was in the context of a search incident to arrest not in the context of executing a search warrant.
- "*Buie* authorizes protective sweeps for unknown individuals in a house who may pose a threat to officers as they effectuate an arrest; *Buie* does not allow a protective sweep for weapons or contraband and in *Waldner* (*US v. Waldner*) we held that in the context of a non-arrest situation, conducting a protective sweep requires a showing of a reasonable suspicion of dangerous individuals in the house."

37

UNITED STATES V. GREEN

- "In a non-arrest context, a protective sweep requires reasonable suspicion of dangerous individuals inside from the outset. Because the government does not argue that the officers had reasonable suspicion to believe that dangerous individuals were present in Green's apartment before they began the protective sweep, we conclude that the protective sweep of Green's apartment violated the 4th Amendment."
- The Court also held that the scope of the search violated the Constitution.

38

UNITED STATES V. GREEN

- "Here, a team of officers performed a sweep of Green's apartment that lasted around 10 minutes and included looking inside kitchen cupboards, trash cans, and even inside a shoe box. This exhaustive search far exceeded the permissible bounds of a protective sweep both in the time it took for a team of officers to sweep the apartment and the places that were searched."
- Since the 8th Circuit determined that the protective sweep was unconstitutionally performed it examined whether an exception to the Exclusionary Rule applied.

39

UNITED STATES V. GREEN

- The Independent Source Doctrine allows admission of evidence initially discovered during, or as a consequence of, an unlawful search, but later obtained independently from activities untainted by the initial illegality.
- For the Independent Source Doctrine to apply the government must show:
  - That the decision to seek the warrant was independent of the unlawful entry (i.e., a warrant would have been sought even if the initial entry had not occurred); and
  - That the information obtained through the unlawful entry did not affect the magistrate's decision to issue the warrant.

40

UNITED STATES V. GREEN

- The Court noted that there was an argument that the Independent Source Doctrine applied since officers still would have discovered that the package contained drugs. Since the box was placed in the apartment there was clear evidence associating the box containing drugs with the apartment and that officers may have obtained a warrant even without the protective sweep.
- The case was remanded to the District Court to "explicitly find" whether the officers would have sought a warrant if they had not earlier conducted the protective sweep.

41

MITCHELL V. KIRCHMEIER

- In 2016, there were protests in North Dakota against the construction of an oil pipeline across Native American tribal land. The protests went on for several months.
- On October 22, 2016, law enforcement officers under the command of Sheriff Kirchmeier fired rubber bullets and pepper sprayed the protesters injuring several protesters.
- On October 24, 2016, Sheriff Kirchmeier and other officials from the State of North Dakota closed a public highway in the area of protests and maintained a reinforced barricade.

42

MITCHELL V. KIRCHMEIER

- On October 27, 2016, there was a clash between law enforcement and the protesters and officers utilized pepper spray and shotguns loaded with sponge bullets and bean bags, injuring numerous protesters. The unrest continued into November.
- On November 20th and 21st "despite wholly failing to provide adequate warnings or announcements to disperse, officers indiscriminately deployed freezing water, chemical agents and other weapons including lead filled bean bags at individuals within the crowd."
- Protesters suffered serious injuries including loss of consciousness, facial burns, broken bones, genital injuries and hypothermia. One protester was hit by "an explosive munition that nearly severed her left hand from her arm."

43

MITCHELL V. KIRCHMEIER

- Sheriff Kirchmeier defended the use of force.
  - "When we're put in the position of protected areas being overrun by numbers of people these are lawful tools to quell the advancement. … We're not just gonna let people and protesters in large groups come in and threaten officers."
- Under Sheriff Kirchmeier's direction, officers continually deployed bean bags against the protesters throughout late 2016 and early 2017.

44

MITCHELL V. KIRCHMEIER

- During the evening of January 18th, 2017, and into the early morning hours of January 19th, protesters gathered at a bridge near the law enforcement blockade of the public highway.
  - It was not clear if the bridge was closed to pedestrian traffic but it was at least closed to vehicular traffic.
- A team of officers, under the supervision of Sgt. Kennelly, were dispatched to the scene and issued 12 gauge shotguns that deployed drag stabilizing bean bag rounds. The Plaintiff decided to go to the bridge after he heard that law enforcement officers were shooting unarmed protesters, including elders and women.

45

MITCHELL V. KIRCHMEIER

- As the Plaintiff approached the bridge he observed officers shooting people on the bridge and he positioned himself in front of women and elders in the crowd and raised his hands in the air and stated "water is life" in the Lakota language.
- After a countdown, several officers fired lead-filled bean bags at the Plaintiff. The Plaintiff was hit in three places, including his head. One round shattered his left eye socket and became lodged in his eye, requiring surgery.

46

MITCHELL V. KIRCHMEIER

- The Plaintiff was arrested and charged with criminal trespass and obstruction of a government function and entered into a pretrial diversion agreement in which the state conditionally dismissed the charges. The Plaintiff then sued under 42 USC § 1983. (The lawsuit included civil rights claims, a *Monell* claim and several state law claims). On a motion to dismiss the District Court dismissed all of the Plaintiff's claims with prejudice.

47

MITCHELL V. KIRCHMEIER

- Plaintiff's appeal argued that the District Court should not have dismissed six claims:
  - The claim against officers who allegedly shot him for retaliatory use of force in violation of the 1st Amendment;
  - The claim against officers who allegedly arrested him for retaliatory arrest in violation of the 1st Amendment;
  - The claim against officers who allegedly shot him for excessive force in violation of the 4th Amendment;
  - The claim against Sgt. Kennelly for failure to intervene to prevent the excessive use of force;
  - The claim against the officers who allegedly shot him for discrimination on the basis of his status as an indigenous person in violation of the Equal Protection Clause of the 14th Amendment; and
  - The *Monell* claim against Morton County insofar as that claim asserted municipal liability for the 4th Amendment and Equal Protection Clause violations.
- The Court deemed any challenge to the dismissal of all other claims to be waived since the Plaintiff didn't properly raise them on appeal.

48

MITCHELL V. KIRCHMEIER

- A motion to dismiss is reviewed de novo and a claim survives a motion to dismiss only if the complaint's nonconclusory allegations, accepted as true, make it not just conceivable but plausible that the defendant is liable.
- The 8th Circuit began its analysis with the claims for retaliatory use of force and retaliatory arrest.
- To prevail on a 1st Amendment retaliation claim, the Plaintiff must show that the defendant would not have taken the adverse action but for harboring "retaliatory animus" against the Plaintiff because of his/her exercise of their 1st Amendment rights.

49

MITCHELL V. KIRCHMEIER

- "It is not enough for the Plaintiff to show that the defendant arrested or used force against the Plaintiff in response to conduct that in fact was protected. If the response was driven not by animus but by the defendant's understanding, however mistaken, of his official duties, then it was not retaliatory."
- The 8th Circuit noted that the nonconclusory allegations did not give rise to a plausible inference that the officers who allegedly shot and arrested the Plaintiff acted out of retaliatory animus.

50

MITCHELL V. KIRCHMEIER

- The Court noted that hundreds of protesters had gathered in the middle of the night on a bridge that was closed and which was near a law enforcement blockade. The Court also noted that the Sheriff was concerned that the protesters were occupying a protected area and that it was only after the Plaintiff stood in the officers' way and ignored a countdown warning that the Plaintiff was shot with bean bags and arrested.
  - "The only plausible inference to draw from these allegations is that the officials' response to [Plaintiff's] presence on the bridge was driven by their understanding of their responsibilities as officials charged with maintaining law and order."
  - While the Court acknowledged that it was conceivable that officers were pursuing a personal vendetta against the Plaintiff because of the content of his speech, it was not plausible.

51

MITCHELL V. KIRCHMEIER

- The 8th Circuit then turned to the excessive force claim and outlined the totality of the circumstances standard from *Garner* and the relevant *Graham* factors.
  - The severity of the crime at issue;
  - Whether the suspect poses an immediate threat to the safety of the officers or others; and
  - Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.
- The 8th Circuit noted that, "we have held time and again that, if a person is not suspected of a serious crime, is not threatening anyone, and is neither fleeing nor resisting arrest, then it is unreasonable for an officer to use more than de minimis force against him."

52

MITCHELL V. KIRCHMEIER

- The 8th Circuit noted that the criminal complaint did not suggest that the Plaintiff was suspected of anything more than trespassing and obstructing a government function which were both "nonviolent misdemeanors." The complaint also did not suggest that the Plaintiff had threatened anyone, fled or resisted arrest.
- The 8th Circuit held that, "it is clearly established that the use of more than de minimis force in circumstances like these violates the 4th Amendment."

53

MITCHELL V. KIRCHMEIER

- The Court noted that the complaint did not allege that officers were aiming at the Plaintiff's face, but that it did allege that the officers were aiming at the Plaintiff.
- The Court also stated that, "the severity of Mitchell's (Plaintiff's) injuries confirms what any reasonable officer in [the defendants'] position would have known; to fire a shotgun loaded with a lead-filled bean bag at a person, regardless of whether one is aiming at the person's face, is to use more than de minimis force against the person. … Therefore, assuming the nonconclusory allegations in the complaint are true, the officers who shot Mitchell violated his Fourth Amendment rights."

54

MITCHELL V. KIRCHMEIER

- The 8th Circuit held that since it was clearly established that the officers who allegedly shot at the Plaintiff and who shot the Plaintiff violated the 4th Amendmen,t the Court had to assume that they were not entitled to qualified immunity and that the District Court erred in dismissing the claims against those officers.
- In discussing another case involving a protest, the Court noted that this holding is not necessarily the end of the analysis. In *Bernini v. City of St. Paul*, the defendant's motion to dismiss excessive force claims was initially denied and it was initially determined that the officers were not entitled to qualified immunity.

55

MITCHELL V. KIRCHMEIER

- "It was not until discovery revealed that the officers used force because a large and potentially riotous group was advancing against a police barricade in a threatening manner despite repeated warnings to back up that the district court granted summary judgement…based on qualified immunity."
- In this case, the Court noted that, "[u]nless and until discovery tells a different story, the officers are not entitled to qualified immunity."

56

MITCHELL V. KIRCHMEIER

- Next the Court analyzed the *Monell* claim. Under *Monell*, a Plaintiff may establish municipal liability under § 1983 by proving that his/her constitutional rights were violated by an action pursuant to official municipal policy or misconduct which is so pervasive among non-policymaking employees of the municipality as to constitute a custom or usage with the force of law.
- To show custom or usage the Plaintiff must prove:
  - The existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity's employees;
  - Deliberate indifference to or tacit authorization of such conduct by the entity's policymaking officials after notice to the officials of that misconduct; and
  - An injury by acts pursuant to the entity's custom.

57

MITCHELL V. KIRCHMEIER

- The Court recited the allegations regarding several of the use of force instances which occurred over the months of protests and held, that taken together, those allegations indicated a pattern of Morton County law enforcement using excessive force against protesters.
- The Court also held if the Sheriff had been supervising law enforcement's response to the protests since the beginning, then he must have been aware of the nature of the protests. The Court also held that the Sheriff defending the use of impact munitions and water cannons in the alleged circumstances of the protest amounted to tacitly authorizing the use of excessive force.

58

MITCHELL V. KIRCHMEIER

- The Court also held that, assuming the complaint's allegations were true, the Plaintiff's injuries were caused by acts pursuant to Morton County law enforcement's pattern of using excessive force against protesters.
  - "In sum, Mitchell has stated a claim for municipal liability under *Monell*. If the allegations in his complaint are true, then Morton County law enforcement engaged in a persistent pattern of excessive force against peaceful protesters that was tacitly authorized by Sheriff Kirchmeier and that led to Mitchell's injury."
- The Court ruled that the District Court erred in dismissing Mitchell's *Monell* claim insofar as the claim asserted liability for the alleged violation of the 4th Amendment.

59

MITCHELL V. KIRCHMEIER

- Next the Court analyzed the failure to intervene claim against Sergeant Kennelly. Under 8th Circuit precedent an officer is liable for violations of the 4th Amendment if the officer fails to intervene in the unconstitutional conduct.
- A law enforcement officer may be liable if he/she doesn't intervene to prevent the use of excessive force when:
  - The officer observed or had reason to know that excessive force would be or was being used; and
  - The officer had both the opportunity and the means to prevent the harm from occurring.

60

MITCHELL V. KIRCHMEIER

- The Court noted that Sergeant Kennelly was operating as the scene commander at the bridge and that he directed other officers as they deployed munitions at the protesters.
- The Court also noted that the allegations made it plausible that, having observed and directed the use of the bean bags prior to the Plaintiff's arrival, that Sergeant Kennelly had reason to know that the officers would continue to deploy them after the Plaintiff arrived.

61

MITCHELL V. KIRCHMEIER

- The Court also held that as scene commander, Sergeant Kennelly had the opportunity and the means to stop the use of the bean bags before the Plaintiff arrived. As such, the Court held that the Plaintiff's allegations made it plausible that both conditions for failure to intervene liability were met.
- The Court also stated that, "it was clearly established that the force allegedly used was excessive, … and that supervising officers with the opportunity and means to prevent the use of excessive force have a duty to do so."

62

MITCHELL V. KIRCHMEIER

- The Court held that at this stage in the litigation, it could not say that Sergeant Kennelly was entitled to qualified immunity and that the District Court erred in dismissing the failure to intervene claim.
- Finally, the Court addressed the dismissal of the claims which alleged that the officers who shot the Plaintiff did so because he was Native American in violation of the Equal Protection Clause of the 14th Amendment.

63

MITCHELL V. KIRCHMEIER

- To prove a violation of the Equal Protection Clause, the Plaintiff would need to show that the officers treated people who were not Native American, but who were otherwise similarly situated to the Plaintiff, more favorably then how the Plaintiff was treated.
  - This is what's known as a threshold showing. If the Plaintiff can't make this showing, then the Plaintiff does not have a viable equal protection clause.
- The Court noted that the Plaintiff failed to allege facts which showed that other similarly situated non-Native Americans were treated more favorably than the Plaintiff was treated.

64

MITCHELL V. KIRCHMEIER

- The Court pointed out that the Plaintiff's complaint contained a vague and conclusory allegation that "the defendants have a history of discriminating against and racially profiling individuals in Indigenous communities."
- The Court held that since the Plaintiff didn't claim facts which showed that any non-Native American participants were treated differently and only assumed that non-Native American participants would have been treated differently, the District's Court dismissal of the Equal Protection claim was proper.
  - Since the Equal Protection claim failed, the *Monell* claim for violation of the Equal Protection Clause also failed.

65

MITCHELL V. KIRCHMEIER

- The Court also held that leave to amend generally is inappropriate where the Plaintiff has not indicated how he/she would make their complaint viable, either by submitting a proposed amendment or indicating somewhere in the court filings what an amended complaint would have contained.
- Since the Plaintiff never did either of those things the Court said the dismissal with prejudice of the claims, other than those which the 8th Circuit had found were viable, was proper and upheld the dismissal with prejudice of all claims other than the excessive force claim, the *Monell* claim for excessive force and the failure to intervene claim.
  - Those claims were remanded back to the District Court for further proceedings.

66

UNITED STATES V. SANDELL

- Law enforcement officials obtained a search warrant for a home in Red Oak, Iowa as part of an investigation into a peer-to-peer file sharing network being used to acquire child pornography.
- After executing the search warrant officers began to suspect a neighbor, Sandell, of actually being the target. Sandell had previously gotten permission to use his neighbors' Wi-Fi when he moved into his home so he could access the internet to register his sex offender status.

67

UNITED STATES V. SANDELL

- Officers went to Sandell's home to question him, knocked on the door, and identified themselves as law enforcement officers to Sandell when he opened the door. Sandell was asked to step outside while the officers conducted a sweep of the home. Once it was confirmed that no one else was in the residence Sandell was asked where he'd prefer to speak with officers and he indicated he would speak to officers in the living room.
- The officers followed Sandell into the living room and explained that they were attempting to obtain a search warrant for Sandell's home based on information they had received from his neighbors.

68

UNITED STATES V. SANDELL

- Sandell was informed that he was not under arrest and that he did not have to speak with officers. Officers also asked for consent to search Sandell's house but he refused to consent.
- As the conversation continued officers reminded Sandell that he was not obligated to speak with them. Sandell was also informed that he was free to leave but he was told that if he chose to drive, officers would ask for consent to search his vehicle. Sandell was also told that officers needed to supervise his movements inside of the home to ensure he did not access weapons or tamper with evidence.

69

UNITED STATES V. SANDELL

- Officers followed Sandell throughout the house while he took his dog outside, took his medications, made coffee, used the restroom and retrieved his probation officer's phone number.
- Sandell made several incriminating statements during his conversation with officers. Sandell admitted to downloading child pornography recently and told officers that his child pornography collection was on his laptop and contained "a little of everything."

70

UNITED STATES V. SANDELL

- While Sandell refused to discuss his criminal history he did state that he was likely facing 15 years and one officer estimated that given his age Sandell would likely spend the rest of his life in prison.
- A search warrant was obtained for Sandell's home and several items of evidence were collected. Sandell was not arrested at that time but was later charged with distribution, receipt, and possession of child pornography. Sandell unsuccessfully tried to suppress the statements he made to officers at his home and ultimately pled guilty while preserving his right to appeal the denial of suppression.

71

UNITED STATES V. SANDELL

- On appeal, Sandell argued that the officers violated his *Miranda* rights while questioning him at his home. The government conceded that Sandell was not advised of his rights and that he was interrogated by officers. Therefore the question before the court was whether Sandell was in custody during the interrogation.
- The Court noted that a person is considered in custody for *Miranda* purposes "when there is a formal arrest or restraint of his/her freedom of movement of the degree associated with formal arrest. To determine whether a suspect was in custody, we ask whether, given the totality of the circumstances, a reasonable person would have felt at liberty to terminate the interrogation and leave or cause the agents to leave."

72

UNITED STATES V. SANDELL

- The Court identified six "non-exhaustive" factors to be considered in making the custody determination:
  - Whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to leave or that the suspect was not considered under arrest;
  - Whether the suspect possessed unrestrained freedom of movement during questioning;
  - Whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions;
  - Whether strong arm tactics or deceptive stratagems were employed during questioning;
  - Whether the atmosphere of the questioning was police dominated; or
  - Whether the suspect was placed under arrest at the termination of the questioning.

73

UNITED STATES V. SANDELL

- The 8th Circuit held that all six factors weighed in favor of Sandell not being in custody. As such, the officers did not need to advise him of his *Miranda* rights.
- The Court pointed to the multiple reminders that Sandell was not under arrest and that he was free to end the interview as "powerful evidence that a reasonable person would have understood that he was free to terminate the interview."

74

UNITED STATES V. SANDELL

- The Court also pointed out that it has consistently held that, "police escorts throughout a house do not restrain a defendant's movement to the degree associated with a formal arrest."
  - The Court also noted that Sandell was never handcuffed or physically or verbally restrained from moving around the house.
- The Court then addressed the voluntariness of the encounter.
  - "A statement is involuntary when it is extracted by threats, violence, or express or implied promises sufficient to overbear the defendant's will and critically impair his capacity for self-determination."

75

UNITED STATES V. SANDELL

- "We determine if a defendant's will has been overborne by examining the totality of the circumstances, including both the conduct of law enforcement in exerting pressure to confess on the defendant and the defendant's ability to resist that pressure."
- Factors used in making that determination include:
  - The degree of police coercion;
  - The length of the interrogations, its location, its continuity;
  - The defendant's maturity, education, physical condition, and mental condition.

76

UNITED STATES V. SANDELL

- The Court held that the totality of the circumstances demonstrated that Sandell's will was not overborne at the time he made the incriminating statements.
- The Court noted that there was not evidence that Sandell lacked the requisite maturity, education, mental or physical stamina to understand his rights. The Court again pointed to the multiple reminders that Sandell was not under arrest and that he was not obligated to speak with officers and that Sandell raised the topic of a lengthy prison sentence. Sandell's prior experience with the criminal justice system was also considered suggestive that he was familiar with his constitutional rights.

77

MISSOURI SUPREME COURT

78

DOE V. FRISZ

- In February of 2018, Doe was indicted on 17 counts of sodomy and child molestation involving his daughters and one count of statutory rape. Later, a substitute information in lieu of indictment alleging the same 17 counts was filed.
- Doe eventually pled guilty to four counts of 1st degree endangering the welfare of a child and all other charges were dismissed. In December of 2019, the circuit court held a plea hearing and victim impact statements were offered. Doe received an SIS and was placed on 5 years of probation with special conditions which included psychological and psychosexual evaluation and sex offender counseling.

79

DOE V. FRISZ

- In July of 2020, Doe's probation officer notified him that he must register under Missouri's Sex Offender Registration Act (SORA) and under the federal Sex Offender Registration and Notification Act (SORNA).
- Prior to notifying Doe, the probation officer had consulted with the Sheriff, who then spoke with the County Counselor's Office. Two days after the probation officer notified Doe that he needed to register, Doe filed a writ of prohibition in the circuit court requesting that the court "prohibit the Chief Law Enforcement Officer from determining that [he] is required to register under either SORA or SORNA."

80

DOE V. FRISZ

- A preliminary writ of prohibition was issued but after conducting a hearing the court ruled that Doe was required to register as a sex offender and denied Doe's request for a permanent writ.
- Doe appealed and the Missouri Supreme Court began its analysis by noting, "[u]ltimately, this Court is primarily concerned with the correctness of the circuit court's result, not the route taken by the circuit court to reach that result, and the circuit court's judgment must be affirmed if cognizable under any theory, regardless of whether the circuit court's reasoning is wrong or insufficient."

81

DOE V. FRISZ

- The Court noted that Missouri law (589.400.1(7) of SORA) requires a person to register if that person is required to register under SORNA. SORNA defines a sex offender as "an individual who was convicted of a sex offense;" and defines sex offense as "a criminal offense that is a specified offense against a minor."
  - "Specified offense against a minor" contains a catchall provision that includes "any conduct that by its nature is a sex offense against a minor."

82

DOE V. FRISZ

- The Court noted that Missouri courts have applied a non-categorical approach when determining whether an offense included conduct that by its nature was a sex offense against a minor.
  - "The non-categorical approach allows courts to look beyond the guilty plea to the underlying facts of the offense to determine whether the petitioner's offense qualifies as a sex offense. A categorical approach, on the other hand, would permit courts to look only to the fact of conviction and the statutory definition of the prior offense."

83

DOE V. FRISZ

- The Supreme Court ultimately determined that it was erroneous for the circuit court to consider charges which were abandoned by the State.
  - The four counts Doe pled guilty to were not sexual in nature.
  - Court precedent had established that courts consider the allegations to which the defendant pled guilty.
- The Court rejected arguments that the victim impact statements, and the probation conditions showed the sexual nature of Doe's offenses.
  - "Victim impact statements are unsworn statements and, by design, allow victims to put before the court facts and circumstances that are not necessarily elements of the charges on which sentence is to be pronounced and regarding which the defendant has not pleaded or been found guilty."
  - "Simply agreeing to probation conditions does not necessarily mean the conditions are related to the underlying conduct on which the conviction is based."

84

DOE V. FRISZ

- The Court then turned to Doe's plea that the Court issue a writ of prohibition because the Sheriff lacked the authority to determine that Doe must register as a sex offender.
- The Court noted that, "Missouri law does not assign to any particular officer the power to determine, in the first instance, whether a particular defendant must register. Rather, section 589.400.2 merely obliges certain offenders to register and section 589.425 provides that failure to register is either a class E or D felony."

85

DOE V. FRISZ

- The Court held that the burden is on the defendant to decide if he/she needs to register and if the prosecutor disagrees, the circuit court will make the ultimate determination of whether the offender was obligated to register in the ensuing criminal case.
- The Court also held that 589.417.2 requires the Sheriff to maintain a list only of offenders who already have registered. "It does not require [the Sheriff] to maintain a list of all offenders who should register. [The Sheriff]'s ministerial duty to keep Doe's name on the list arises only once Doe registers. Section 589.417.2 cannot otherwise be read to imply some sort of authority to determine sex offender status."

86

DOE V. FRISZ

- The Court also noted that a writ of prohibition was not appropriate in this case.
  - "Prohibition lies to prevent or control judicial or quasi-judicial action. It is the nature of the act, and not the character of the board or tribunal proceeded against which determines the propriety of the writ."
- The Court determined that the Sheriff had taken executive action, not judicial or quasi-judicial action. Since the action had no binding effect on the offender the writ of prohibition was unavailable to Doe.
  - The Sheriff's "determination on the other hand, has no legal effect, just as Doe's counsel's determination that Doe does not need to register has no legal effect. Doe either was or was not obligated to register the moment he pleaded guilty to the four charges. This did not change when he received the letter from his probation officer notifying him [the Sheriff] believed he needed to register."

87

DOE V. FRISZ

- "Doe's only remedy short of waiting to see if he is charged for failing to register is to seek a declaration that he does not have to register as a sex offender.... A declaratory judgment could have officially determined whether Doe was a sex offender and had to register under SORA, and a petition for writ of prohibition will not stand as a substitute for a petition seeking a declaratory judgment."
- The Court held that while the circuit court erred in determining Doe must register as a sex offender, the circuit court was correct in denying Doe's request for a writ of prohibition.

88

MISSOURI COURT OF APPEALS

89

STATE V. REUTER

- This is a matter of first impression in Missouri. (Missouri courts have not previously ruled on the question of law presented).
- Reuter was charged with three counts of tampering with a judicial officer, alleging that Reuter engaged in conduct reasonably calculated to harass or alarm three circuit court judges by delivering a threatening manifesto to each judge's residence. St. Louis County police officers travelled to Reuter's home to execute an arrest warrant.

90

STATE V. REUTER

- When the officers approached Reuter's home, they announced their presence and asked Reuter to exit the home. Reuter stated that he would "protect himself" if officers came through the door. The officers retreated and surrounded Reuter's home.
- Detective Koester was assigned to crisis intervention and crisis negotiations and he spoke with Reuter over the telephone during an hour-long standoff. During the conversation, Reuter frequently alluded to his willingness to defend himself against officers. He also stated that he was "very upset about how judges don't follow the law and how judges did not treat him fairly."

91

STATE V. REUTER

- When Reuter surrendered, he was handcuffed and placed into a police vehicle, but he was not advised of his *Miranda* rights. Three detectives accompanied Reuter while he was transported to the police station.
- Detectives engaged in casual conversation with Reuter about topics such as football and dentistry. Once detective thanked Reuter for his peaceful surrender. Reuter asked the detectives if they would have eventually made entry into his home and a detective answered "yes." Reuter then volunteered that he was glad the officers did not because he had a firearm, but he had taken the magazine out of it prior to exiting the residence.

92

STATE V. REUTER

- Reuter filed a motion to suppress his statements to police, including the statements made through the door, over the telephone and in the police vehicle. Reuter argued that the statements were obtained via custodial interrogation in violation of *Miranda*. The trial court granted Reuter's motion and the State appealed.
- The State raised three points on appeal:
  - That the trial court erred in finding a *Miranda* violation and suppressing the statements Reuter made to police while he was in the residence because he was not in custody;
  - That the trial court erred in finding a *Miranda* violation and suppressing the statements Reuter made to police while he was in the residence because neither the questioning through the door not the telephone were an interrogation;
  - That the trial court erred in finding a *Miranda* violation and suppressing the statements Reuter made to police while he was being transported because the officers did not conduct an interrogation.

93

STATE V. REUTER

- The Eastern District began its analysis by noting "the prosecution may not use statements stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."
  - "Custodial interrogation means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."
- The Court noted that both parties agreed that Reuter had not been informed of his *Miranda* rights before he made statements, so the question was whether Reuter was in custody when he made the statements.

94

STATE V. REUTER

- "We find no Missouri cases addressing whether a suspect in a barricaded standoff with police officers is in custody for purposes of *Miranda*. However, this is not a novel issue, as courts from many other jurisdictions have addressed whether *Miranda* requires the suppression of statements by barricaded suspects who have not been informed of their rights. Regardless of how these courts reach their decisions, all appear to arrive at the same conclusion: *Miranda* does not mandate suppression."

95

STATE V. REUTER

- In analyzing custody for the purpose of *Miranda* in a standoff situation, the courts consider whether a suspect:
  - Can prevent law enforcement officials from exercising immediate control over his/her actions;
  - Can move freely about the place in which they are barricaded;
  - Is in the physical presence of an interrogating officer;
  - Is able to terminate his/her conversation with police by putting down the phone; and
  - Can control the direction of the conversation by discussing anything he/she wants.

96

STATE V. REUTER

- A crisis negotiation with a barricaded suspect has been distinguished from the custodial setting at issue in *Miranda*.
  - "An armed, barricaded suspect exercises more control over the situation than an unarmed individual being interrogated in a police station."
- The Court noted that law enforcement officials cannot physically restrain a barricaded suspect and subject them to whatever psychological techniques they think would be most effective. The Court also noted that law enforcement does not have the same psychological advantage that is present in a custodial setting because the barricaded party can threaten violence to keep the police at bay.

97

STATE V. REUTER

- The Court further noted that the primary goal of crisis negotiators is to peacefully resolve the standoff, not to collect incriminating evidence for later prosecution.
  - "Negotiators must build rapport with the suspect and obtain his or her trust in order to accomplish a peaceful resolution. Indeed, if the suspect were to perceive that the crisis negotiator was asking questions merely seeking to incriminate the suspect, negotiations could break down and cause the suspect to become extremely dangerous."
- "Considering the totality of the circumstances, we find the Defendant was not in custody during crisis negotiations while in a standoff with law enforcement. *Miranda* does not require suppression of his statements to police through the door and over the telephone."

98

STATE V. REUTER

- The Eastern District determined that the State's second point was moot since it had already determined that Reuter was not in custody during the standoff.
- The Court began its analysis regarding the statements made in the police vehicle by noting, "interrogation under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."

99

STATE V. REUTER

- The Court also noted that interrogation does not extend to statements unexpectedly volunteered by a person in custody.
  - "Interrogation as conceptualized in the *Miranda* opinion, must reflect a measure of compulsion above and beyond that inherent in custody itself."
- The Court compared the conversation in the police car in this case to the situation in *Rhode Island v. Innis*.
  - "The record clearly shows that Defendant's statements to the officers were not the product of an interrogation. Defendant's voluntary statements were not in response to express questioning, nor was he subjected to the functional equivalent of interrogation."
  - The Court noted that the detectives had been discussing dentistry, the New England Patriots and Tom Brady. The Court also held that a detective "could not reasonably expect that thanking the Defendant for his peaceful surrender would cause the Defendant to volunteer incriminating statements."
- The trial court's suppression of the statements was reversed.

100

MISSOURI GENERAL ASSEMBLY

101

MISCELLANEOUS PROVISIONS

- 575.200 – Escape from Custody – This statute has been amended to make it a crime to escape from custody or attempt to escape from custody, while being held in custody, after arrest, for any offense or violation of probation or parole.
- 115.277 has been amended to include employment as a first responder, health care worker or a member of law enforcement as reasons a person may request an absentee ballot.
- 304.022 – vehicles operated by a county or municipal park ranger have been added to the definition of emergency vehicle.

102

MISCELLANEOUS PROVISIONS

- 455.085 has been amended to add the phrase "or Notice is given by actual communication to the respondent in a manner reasonably likely to advise the respondent" as a manner in which a respondent is deemed to have notice of an order of protection.
- 566.010 – the definition of sexual contact has been amended to include "causing semen, seminal fluid, or other ejaculate to come into contact with another person…."

103

MISCELLANEOUS PROVISIONS

- 566.086 has been amended to add another means of committing the offense of sexual contact with a student.
- A person commits the offense of sexual contact with a student if he or she has sexual contact with a student of the school and is: …
  - (7) A coach, assistant coach, director, or other adult with a school-aged team, club, or ensemble, regardless of whether such team, club, or ensemble is connected to a school or scholastic association. For purposes of this subdivision, "school-aged team, club, or ensemble" means any group organized for individual or group competition for the performance of sports activities or any group organized for individual or group presentation for fine or performing arts, by any child under eighteen years of age.

104

MISCELLANEOUS PROVISIONS

- 566.149 – The crime of possession of child pornography has been added to the list of offenses which prevents a person from being present within 500 feet of a school and other prohibited locations identified in the statute.
- 566.150 - The crime of possession of child pornography has been added to the list of offenses which prevents a person from being present within 500 feet of a public park and other prohibited locations identified in the statute.
- 566.155 - The crime of possession of child pornography has been added to the list of offenses which prevents a person from being a coach, manager, or athletic trainer for any sports team in which a child less than 17 is a member or "shall not supervise or employ any child under eighteen years of age."

105

MISCELLANEOUS PROVISIONS

- 567.020 – If a person is under the age of 18 and is a suspect in the offense of prostitution, the person shall be classified as a victim of abuse and such abuse shall be reported immediately to the children's division and to the juvenile officer for appropriate services, treatment, investigation and other proceedings as provided under chapter 207, 210 and 211. Upon request, the local law enforcement agency and the prosecuting attorney shall assist the children's division and the juvenile officer in conducting the investigation.

106

MISCELLANEOUS PROVISIONS

- 573.024 – "A person commits the offense of enabling sexual exploitation of a minor if such person acting with criminal negligence permits or allows any violation of section 566.210, 566.211, 573.020, 573.023, 573.025, 5 573.030, 573.035, 573.200, or 573.205." The offense is a class E felony for the first offense and a class C felony for second or subsequent offenses.
- If the person guilty of the offense of enabling sexual exploitation of a minor is an owner of a business or the owner's agent and the business provided the location or locations for such exploitation, the business location or locations shall be required to close for up to one year for the first offense, and the length of time shall be determined by the court. For a second offense, such business location or locations shall permanently close. As used in this section, "business" shall include, but is not limited to, a hotel or massage parlor and "owner's agent" shall include, any person empowered to manage the owner's business location or locations.

107

MISCELLANEOUS PROVISIONS

- 589.404 – the definitions for "sexual conduct" and "sexual contact" as used in 589.400 to 589.425 have been amended.
  - "Sexual conduct" – sexual intercourse, deviate sexual intercourse, or sexual contact.
  - "Sexual contact" – any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person, or such touching through the clothing, or causing semen, seminal fluid, or other ejaculate to come into contact with another person, for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim.

108

573.550

- 573.550 - A person commits the offense of providing explicit sexual material to a student if such person is affiliated with a public or private elementary or secondary school in an official capacity and, knowing of its content and character, such person provides, assigns, supplies, distributes, loans, or coerces acceptance of or the approval of the providing of explicit sexual material to a student or possesses with the purpose of providing, assigning, supplying, distributing, loaning, or coercing acceptance of or the approval of the providing of explicit sexual material to a student. The offense of providing explicit sexual material to a student is a class A misdemeanor.

109

573.550

- "Explicit sexual material" means "any pictorial, three dimensional, or visual depiction, including any photography, film, video, picture, or computer-generated image, showing human masturbation, deviate sexual intercourse as defined in section 566.010, sexual intercourse, direct physical stimulation of genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals; provided, however, that works of art, when taken as a whole, that have serious artistic significance, or works of anthropological significance, or materials used in science courses, including but not limited to materials used in biology, anatomy, physiology, and sexual education classes shall not be deemed to be within the foregoing definition;"

110

573.550

- "Person affiliated with a public or private elementary or secondary school in an official capacity" means "an administrator, teacher, librarian, media center personnel, substitute teacher, teacher's assistant, student teacher, law enforcement officer, school board member, school bus driver, guidance counselor, coach, guest lecturer, guest speaker, or other nonschool employee who is invited to present information to students by a teacher, administrator, or other school employee. Such term shall not include a student enrolled in the elementary or secondary school."

111

574.105

- 574.105 – the definitions used for crimes such as money laundering have been amended to include more contemporary means of conducting transactions.
  - Cryptocurrency – "a digital currency in which transactions are verified and records are maintained by a decentralized system using cryptography;
  - Financial Transaction – "a transaction involving the movement of funds by wire or other means, including blockchain; one or more monetary instruments; or the transfer of title to any real property, vehicle, vessel or aircraft; or involving the use of a financial institution as defined under 31 USC Section 5312.

112

574.105

- Monetary Instruments –
  - Currency and coin of the United States or of any other country, cryptocurrency, travelers' checks, personal checks, bank checks, bank wires, or money orders; or
  - Investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;
- Transaction – "a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit; withdrawal; transfer between accounts; exchange of currency; loan; extension of credit; purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument; use of a safe deposit box; or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected."

113

191.1400

- The State of Missouri has enacted the "No Patient Left Alone Act."
- This law is primarily aimed at health care facilities and establishes standards regarding the minimum visitation someone in a health care facility can receive.
- 191.1400.6 contains the areas and circumstances where a health care facility may limit access to the patient. 191.1400.6(3)(a) allows the health care facility to limit access to the patient at the request of a law enforcement agency for a person in custody. 191.1400.6(3)(b) allows the facility to limit access to a patient due to a court order.
- Health Care Facility – "a hospital, as defined in section 197.020, a long-term care facility licensed under chapter 198, or a hospice facility certified under chapter 197."

114

210.1500

- 210.1500.1 – "When a child is located by a police officer or law enforcement official and there is reasonable cause to suspect the child may be a victim of sex trafficking or severe forms of trafficking as those terms are defined under 22 USC Section 7102, the police officer or law enforcement official shall immediately cause a report to be made to the children's division in accordance with section 210.115. Upon receipt of a report by the children's division and if the children's division determines that the report merits an investigation, the reporting official and the children's division shall ensure the immediate safety of the child and shall coinvestigate the complaint to its conclusion."

115

210.1500

- 210.1500.2 – "If the police officer or law enforcement official has reasonable cause to believe that the child is in imminent danger of suffering serious physical harm or a threat to life as a result of abuse or neglect due to sex trafficking or sexual exploitation and such officer or official has reasonable cause to believe the harm or threat to life may occur before a juvenile court is able to issue a temporary protective custody order or before a juvenile officer is able to take the child into protective custody, the police officer or law enforcement official may take or retain temporary protective custody of the child without the consent of the child's parent or parents, guardian, or any other person legally responsible for the child's care, as provided under section 210.125."

116

210.1500

- 210.1500.3 – "If the child is already under the jurisdiction of the court under paragraph (a) of subdivision (1) of subsection 1 of section 211.031 and in the legal custody of the children's division, the police officer or law enforcement official, along with the children's division, shall secure placement for the child in the least restrictive setting in order to ensure the safety of the child from further sex trafficking or severe forms of trafficking."

117

210.1500

- 210.1500.4 – "The children's division and the reporting officer or official shall ensure a referral is made to the child advocacy center for a forensic interview and an evaluation, as necessary to ensure the medical safety of the child, by a SAFE CARE provider as defined under section 334.950. The child shall be assessed utilizing a validated screening tool specific to sex trafficking to ensure the appropriate resources are secured for the treatment of the child."

118

210.1500

- 210.1500.5 – "For purposes of this section, multidisciplinary teams shall be used when conducting an investigation. Multidisciplinary teams shall be used in providing protective or preventive social services, including the services of law enforcement upon the request by the department of social services, a liaison of the local public school, the juvenile officer, the juvenile court and other agencies, both public and private, to secure appropriate services to meet the needs of the child."

119

OTHER AMENDMENTS OF NOTE TO REVIEW

- 595.201 – Amendments to the Sexual Assault Survivors' Bill of Rights.
- 595.226 – Amendments to what information is considered "identifying information" for redaction from any court record prior to release. (interplay with Sunshine law).
- 70.631 – Expansion of jurisdictions which may participate in LAGERS.

120